

WISCONSIN STATE  
LEGISLATURE  
COMMITTEE HEARING  
RECORDS

2005-06

(session year)

Senate

(Assembly, Senate or Joint)

Committee on  
Agriculture and  
Insurance  
(SC-AI)

File Naming Example:

- Record of Comm. Proceedings ... RCP
- 05hr\_AC-Ed\_RCP\_pt01a
  - 05hr\_AC-Ed\_RCP\_pt01b
  - 05hr\_AC-Ed\_RCP\_pt02

*Published Documents*

➤ Committee Hearings ... CH (Public Hearing Announcements)

➤ \*\*

➤ Committee Reports ... CR

➤ \*\*

➤ Executive Sessions ... ES

➤ \*\*

➤ Record of Comm. Proceedings ... RCP

➤ \*\*

*Information Collected By  
Committee Clerk For Or Against  
Proposal*

➤ Appointments ... Appt

➤ \*\*

➤ Clearinghouse Rules ... CRule

\*\*

➤ Hearing Records ... HR (bills and resolutions)

➤ **05hr\_ab0635\_SC-AI\_pt01**

➤ Miscellaneous ... Misc

➤ \*\*

## Vote Record Committee on Agriculture and Insurance

Date: 11-28-05

Moved by: Kedzie      Seconded by: Olsen

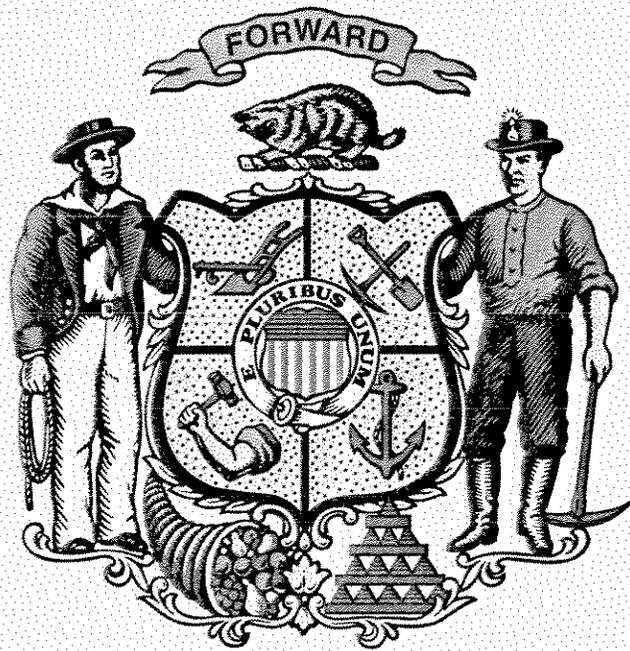
AB 635      SB \_\_\_\_\_      Clearinghouse Rule \_\_\_\_\_  
 AJR \_\_\_\_\_      SJR \_\_\_\_\_      Appointment \_\_\_\_\_  
 AR \_\_\_\_\_      SR \_\_\_\_\_      Other \_\_\_\_\_

A/S Amdt \_\_\_\_\_  
 A/S Amdt \_\_\_\_\_ to A/S Amdt \_\_\_\_\_  
 A/S Sub Amdt \_\_\_\_\_  
 A/S Amdt \_\_\_\_\_ to A/S Sub Amdt \_\_\_\_\_  
 A/S Amdt \_\_\_\_\_ to A/S Amdt \_\_\_\_\_ to A/S Sub Amdt \_\_\_\_\_

Be recommended for:  
 Passage       Adoption       Confirmation       Concurrence       Indefinite Postponement  
 Introduction       Rejection       Tabling       Nonconcurrence

<u>Committee Member</u>	<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
<b>Senator Dan Kapanke, Chair</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Senator Neal Kedzie</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Senator Ronald Brown</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Senator Luther Olsen</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Senator Jon Erpenbach</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Senator David Hansen</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Senator Mark Miller</b>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Totals:</b>	_____	_____	_____	_____

Motion Carried       Motion Failed



# Dan Kapanke

Wisconsin State Senator - 32nd District

OK



November 15<sup>th</sup>, 2005

Members  
Senate Committee on Agriculture & Insurance

RE: Assembly Bill 635

Attached find background information related to Assembly Bill 635 which will be before the committee on Tuesday, November 15<sup>th</sup>, 2005.

In chronological order find;

## 1<sup>st</sup> Packet

- November 15, 2005, DATCP Testimony for 11/15/2005 Hearing.
- October 26<sup>th</sup>, 2005 DATCP Letter to Chairman Ott on Substitute Amendment to Assembly Bill 635.
- Undated Document titled "AB 635 DATCP Suggested Amendments".
- History of Assembly Bill 635.
- Assembly Record of Proceeding on Assembly Bill 635.
- LRBA1267/1, Assembly Amendment 1 to Assembly Substitute Amendment 1 to 2005 Assembly Bill 635.
- LRBs0253/1, Assembly Substitute Amendment 1 to 2005 Assembly Bill 635
- LRB 1813/4 2005 Assembly Bill 635

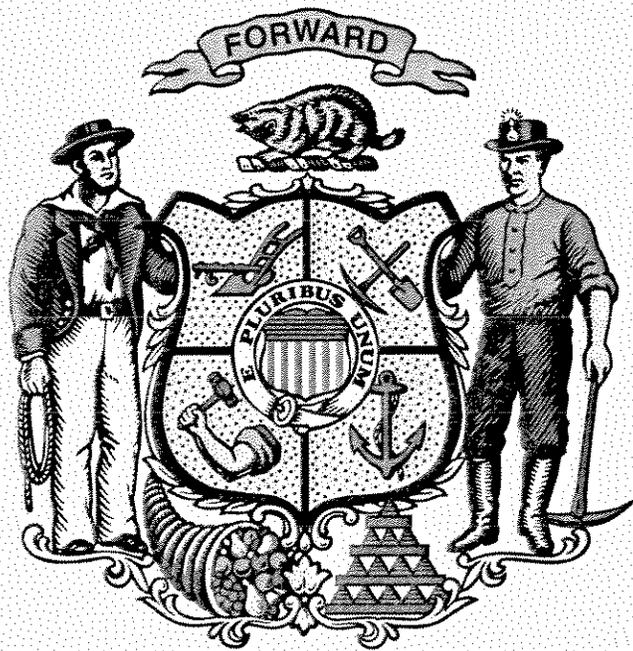
## 2<sup>nd</sup> Packet. (Provided by Ron Kuehn representing Potato and Vegetable Growers Assc.)

- Undated document titled, "Amendments to Wisconsin Agriculture Producer Security Act"
- Undated document titled, "PACA FACT FINDER".
- Documents titled "Producer Security Act Sign-Off" signed by 40 growers of processed potatoes.

Questions on Assembly Bill 635 should be directed to my staff member John O'Brien

Thank you,

Senator Dan Kapanke





State of Wisconsin  
Jim Doyle, Governor

Department of Agriculture, Trade and Consumer Protection  
Rod Nilsestuen, Secretary

November 15, 2005

The Honorable Dan Kapanke, Chair  
Senate Committee on Agriculture and Insurance

**RE: AB 635, relating to participation by certain persons who buy potatoes in the Agricultural Producer Security Program.**

Dear Senator Kapanke:

Thank you for permitting the Department of Agriculture, Trade and Consumer Protection the opportunity to testify regarding AB 635 (Including Assembly Substitute Amendment 1). DATCP is opposed to this bill for two primary reasons:

- DATCP is less than thrilled with the overall concept of attempting to walk a tight line between coverage under either the Wisconsin Producer Security Fund or the federal Perishable Agricultural Commodities Act (PACA). We are not confident that it is possible.
- DATCP is opposed the change in licenses fees contained within the bill. This bill relieves some potato buyers from having to contribute to the fund, but imposes many new requirements on them. DATCP still has a great deal of statutory obligations under this bill – but loses the funding with which to carryout these obligations.

### **Historical Overview**

Before we discuss AB 635, I would like to provide a very quick general overview of the Agricultural Producer Security Program. This program – as it relates to vegetable contractors – was first created in the late 1980s. Beginning at that time, persons who purchased vegetables from Wisconsin producers for use in processing were required to provide either audited financial statements that met certain minimum standards for current ratio and debt to equity ratio, or post security, such as a bond or letter of credit, with DATCP. In addition to the Financial Statement and/or security requirement, the program also required vegetable contractors to obtain a license and regulated certain trade practices related to transactions between contractors and growers.

The vegetable contractor security program – along with similar programs for milk and grain producers – was overhauled in 2002. Beginning at that time, most individual security requirements were replaced by the Agricultural Producer Security Trust Fund. In the event a participating vegetable contractor defaults on payment to producers, the Trust Fund is available to provide partial (up to 90%) payment to producers.

Most vegetable contractors are required to contribute assessments to the producer security fund. Assessment amounts are based on the contractor's total purchases from Wisconsin producers and the contractor's financial statement ratios. Assessment calculations are contained in Chapter 126 of the Wisconsin Statutes. Essentially, the program "front-loads" the contractor's cost for

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coverage by the fund. Assessment rates are highest in the contractor's first 3 years of participation and are lowered in the 4<sup>th</sup> year and again in the 6<sup>th</sup> year of participation. Because this program first went into effect in 2002, most vegetable contractors saw their first decrease in fund assessments in 2005. Another decrease is expected in 2007.

### **Overlap with the Federal PACA (Perishable Agricultural Commodities Act) Trust**

Since the inception of the Wisconsin Vegetable Contractor Producer Security Program (late 1980's) the program has applied to "vegetables for use in processing". This definition was originally developed because vegetables sold for "fresh-market use" are regulated by the federal PACA program. However, in 1997, PACA definitions were expanded to include some potato products that Wisconsin law defines as "processing vegetables" and regulates under the Agricultural Producer Security program. This means that since 1997, there is some potential overlap between the protection for producers afforded by Wisconsin's producer security program and the federal PACA program.

It should be noted, however, that the protections offered by the PACA trust program are far different than those offered by Wisconsin's Producer Security Program. Whereas the Wisconsin Program has a Trust Fund available to pay producers in the event the contractor fails to do so, the PACA trust program simply grants producers a favorable position in bankruptcy court if the contractor files bankruptcy. As long as a variety of specific conditions are met, growers who are owed payment by contractors may be able to skip ahead of secured creditors in bankruptcy court actions. However, skipping ahead in bankruptcy court is only useful if the contractor has sufficient assets to pay the claims of producers as well as any other individuals or entities that the bankruptcy court determines have first priority.

### **DATCP is "Lukewarm" On The Overall Concept of AB 635.**

DATCP recognizes that the current agricultural producer security program is expensive for certain processing potato buyers. We also recognize that the cost of the program presents a real problem for some Wisconsin growers who are competing for markets with growers in other states. However, DATCP believes that this bill gives growers an unrealistic level of assurance that their transactions are covered by the PACA Trust and presents challenging enforcement issues for DATCP and the contractors it regulates.

This bill allows eligible processing potato buyers to "opt-out" of contributing to the security fund if they meet a list of very specific conditions. This level of detail is required in order to attempt to ensure that all a contractor's transactions with Wisconsin producers meet the requirements for coverage under the PACA trust. This is a good idea – but only in theory. In reality, however, PACA trust protection is far more nebulous and complicated than this list of requirements would lead one to believe. For example, DATCP staff has had several discussions with PACA regional staff in Chicago and headquarters staff in Washington D.C. regarding the scope of PACA coverage. On the specific question of whether PACA coverage applies to intrastate trade as well as interstate, for example, we received three different answers at three different times. (The answers were; "yes", "no", and "it depends on what the final product is and where it is sold".) In

the end, the growers' coverage under PACA is entirely dependent on the determination of the bankruptcy court.

It is axiomatic that in most bankruptcies, the bankrupt has insufficient assets to pay all debts. Creditors of the bankrupt vie for the limited assets available, which frequently entails attempting to defeat the claims of other creditors. The detailed list of requirements contained in AB 635 leaves producers with the impression that the state of Wisconsin has determined in advance that producers will be covered under PACA. However, because of the uncertainties of the PACA Trust program, the state is in no position to provide any such assurance.

Furthermore, DATCP is concerned about administration and enforcement under AB 635. If the bill becomes law, sooner or later DATCP will find instances of a contractor failing to comply with one or more requirements for opting out of the producer security program. For example, assume DATCP has evidence that a processed potato buyer made one payment to one grower in 40 days instead of the required 30 days. Under AB 635, this contractor no longer is eligible for opting out of the producer security program and must resume participation in the program. This could result in the contractor having to pay significant assessments simply because s/he made one late payment to one producer. Admittedly, this is an extreme example, but AB 635 requires walking a very tight line between coverage under the federal program or coverage under the state program, the intent of the bill being to ensure that coverage exists under one or the other program. If a contractor is 10 days late in making a payment to one contractor, coverage under PACA is non-existent, and if, as a matter of state policy, we want to make certain that coverage for the producer exists at all, DATCP will be required to strictly apply the requirements of AB 635.

#### **DATCP Is Opposed to Reducing License Fees for Only Certain Contractors.**

Under current law, vegetable contractors must pay an annual license fee of \$50 plus 5.75¢ per \$100 in contract obligations. This license fee is separate and distinct from the Fund Assessments. As amended in Assembly Substitute Amendment 1, AB 635 replaces this fee with a \$525 license fee for potato buyers who elect not to participate in the fund.

DATCP is opposed to a change in license fees for several reasons.

- Changing the license fee for affected potato buyers to \$500 reduces DATCP's revenues to operate the producer security program, with little or no reduction in DATCP's administrative and enforcement responsibilities.
- Granting this one fee change – without examining the entire program -- unfairly shifts costs from the potato industry to other vegetable contractors and (indirectly) to the milk and grain industries.
- Changing the license fee to \$500 would actually result in a license fee increase for most of the affected potato buyers. There are roughly a dozen vegetable contractors who could be affected by AB 635. Most of them currently pay far less than \$500. The idea of a flat fee benefits only one very large company – at the expense of all other eligible potato contractors.

- There is more to the protections afforded by the Wisconsin Agricultural Producer Security Program than participation in the security fund. Producers who contract with potato buyers who opt out still have a level of protection relating to things like trade practices, contract requirements, and payment terms. DATCP still must administer and enforce these provisions whether or not AB 635 becomes law, and there is a cost associated with doing so.
- Changing the license fee to \$500 results in disparate treatment for other contractors. Under current law, not all vegetable contractors participate in the security fund. The most relevant example is vegetable contractors who pay producers cash on delivery. Despite their non-participation in the fund, these contractors nonetheless pay full license fees. DATCP knows of no reason why the potato contractors affected by AB 635 should receive more favorable treatment than contractors that pay cash on delivery.

### **Conclusion**

We appreciate the opportunity to provide testimony on AB 635. DATCP understands the problem this legislation was created to address. However, we believe the problem could be more effectively fixed by either modifying the Fund assessment formula to reduce costs to certain processing potato buyers or by redefining "processing vegetable" under the law to exclude this type of product.

The bill requires DATCP, contractors, and growers to walk a very precise line between the PACA Trust and the Producer Security Fund without overlapping or leaving gaps between the two different coverages. In the abstract, it's a good idea, but we are not optimistic that it can be done. In our opinion, AB 635 puts producers at greater risk of not recovering in the event of a contractor default. And, since the sole objective of the producer security program is to insure that producers get paid, the increased risk inherent in AB 635 is not something we can unreservedly support.

We thank the Committee for the opportunity to provide testimony on AB 635.

Respectfully,

Janet Jenkins  
Administrator  
Division of Trade and Consumer Protection



State of Wisconsin  
Jim Doyle, Governor

Department of Agriculture, Trade and Consumer Protection  
Rod Nilsestuen, Secretary

October 26, 2005

The Honorable Al Ott  
State Representative  
Chair, Assembly Committee on Agriculture

Delivered via e-mail

**Re: Substitute Amendment to AB 635 – Producer Security and Potatoes.**

Dear Representative Ott:

Thank you once again for permitting us to share our views with your committee regarding AB 635 and for working with all interested parties in an attempt to reach a solution that addresses every stakeholder's concerns. Given the positions of the various players, we know that a mutually acceptable resolution presents a difficult task.

We have received Rep. Ballweg's Substitute Amendment and we appreciate her efforts regarding this legislation. While the Substitute Amendment does improve the bill by clearing-up some technical issues, it does not change the overall concept from the original bill and does not address the license fee issue. Therefore, DATCP must remain opposed. We wanted to take one final opportunity to articulate our concerns.

We acknowledge the point made by WPVGA – that the Wisconsin Producer Security program, as it currently exists, is contributing to decreased marketing opportunities for potatoes grown in Wisconsin. Further, we agree that there is some overlap between the Federal PACA Trust program and the Wisconsin Producer Security program. While the Wisconsin program is far more complete and thorough in its coverage for growers, it can also (but not necessarily) be much more expensive.<sup>1</sup> It seems to us that all parties involved agree that there is a problem, but this legislation is, in our opinion, the worst possible way to solve it.

Throughout this process, we have considered three basic ways of reaching the WPVGA's goals. Of the three, DATCP's least favorite is AB 635. The other two ideas are summarized below:

- **Treat “chip potatoes” the same as “fresh market potatoes”.** Under current law, vegetables purchased for “fresh market use” are excluded from coverage in the producer security program. This could be accomplished by editing the Producer Security Law (Ch. 126, Stats.) definition of “vegetable”. Early in the discussions that eventually led to AB 635,

<sup>1</sup> Producer Security Fund Assessments are calculated based on the contractor's total purchases and its balance sheet ratios. The program is relatively cheap for contractors who can show strong current ratios and debt to equity ratios.

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PVGA, DATCP and some interested legislators discussed this option at a meeting in the capitol. This appeared to be the best option at that time, but it was later rejected by WPVGA because some WPVGA members insist that DATCP be involved in making sure the transactions are covered under PACA. (This point is crucial to understanding why DATCP is opposed to AB 635.)

- **Modify the Formula to Address Inequities In How Producer Security Fund Assessments Are Calculated.** As you know, the current Producer Security Trust Fund or shared-risk pool is used to secure payments to producers. The Fund is funded by assessments paid by contractors. However, in the case of vegetable contractors who pay producers relatively quickly (i.e., not once a year like some contractors), the assessment formula has proven to be very unfair and resulted in very high cost for one particular potato buyer. It is possible for either the legislature or DATCP (by administrative rule) to amend the formula to lower assessment costs and remove this inequity.

As we stated in our testimony, we generally dislike AB 635 but could live with the Substitute Amendment to AB 635 if it were not for the license fee adjustments contained in Sections 3 and 4 of the bill. Either with or without the license fee adjustment, this bill puts the State of Wisconsin in the uncomfortable position of having some oversight over whether or not contractors are complying with PACA Trust requirements, and requires the state to do something about it if they are not. This is a very difficult regulatory function that we believe is nearly impossible to accomplish effectively.

However, if the potato industry insists that the State of Wisconsin take on this regulatory role, the least they can do is pay for it. The substitute amendment leaves DATCP in a position of responsibility for contractor's transactions but removes the funds needed to fulfill its obligations. We strongly suggest the Committee amend the bill to remove the license fee provisions found in Sections 3 & 4 of the Substitute Amendment. If this change is made, DATCP could change its position on the bill from "opposed" to "neutral". In the alternative, since potato producers believe that they do not need the protections that the Producer Security program affords, then remove all responsibility from DATCP for attempting to insure compliance with a program (PACA) that Wisconsin does not operate.

Again, thank you for allowing the opportunity to raise our concerns.

Respectfully,

Janet Jenkins,  
Administrator, Division of Trade and Consumer Protection

CC: Representative Joan Ballweg  
Members of the Assembly Committee on Agriculture  
Senator Dan Kapanke

# AB 635

## DATCP suggested Amendments

### **Issue 1 -- \$500 License Fee for processing potato buyer who has elected not to participate (Section 3 of AB 635).**

DATCP objects to altering license fees based on the policy issue discussed below. Even though DATCP objects to this portion of the bill, we noted one technical drafting error.

#### **Policy Issue Discussion**

**Limiting potato buyers' license fees drastically cuts DATCP revenues – but AB 635 does not represent a significant reduction in DATCP workload.** The producer security program is designed to provide some assurance that producers will be paid for their products. The producer security program is administered using license fees collected from contractors (license fees are separate and distinct from assessments to the Fund). Even if potato buyers elect not to participate in the fund (as is possible only under AB 635), DATCP is still required to regulate this industry under the program. Limiting potato buyers' license fees drastically cuts DATCP revenues – but AB 635 does not represent any reduction in DATCP workload. This unfairly shifts the cost of operating the program away from the potato industry to other vegetable processors and (indirectly) milk contractors and grain dealers. Under current law; all contractors currently pay the same license fees whether or not they are contributing to the fund.

**Recommended Amendment:** Delete Section 3 (Page 3, lines 6 through 9) of AB 635.

#### **Technical Issue Discussion**

**As drafted, AB 635 adds a \$500 fee for potato buyers who opt out participating in the fund without adjusting existing fees.** DATCP does not have an issue with this portion of the bill as currently drafted; however, , we believe proponents of the bill had intended to replace the existing license fee with a flat \$500 fee for potato buyers who elect not to participate in the fund. Current law lists required fees under 126.56(4) as follows (paraphrased and simplified for clarity – please see statute for specific language):

- (a) A processing fee of \$25
- (b) A license fee of \$25 plus 5.75¢ for each \$100 in contract obligations to Wisconsin vegetable growers.
- (c) A surcharge of \$500 if the applicant operating without a vegetable contractor license.

- (d) A surcharge of \$100 if the applicant failed to provide a financial statement as required by law.
- (e) A surcharge of \$100 for failing to submit renewal application by the annual license expiration date (January 31).

AB 635 simply adds a paragraph “(f)” to the existing list requiring a \$500 fee for potato buyers who elect not to participate in the fund. While this nullifies DATCP policy objections discussed above, we believe it is counter to the bill proponents’ intention.

**Technical Issue Amendment (Not Recommended):** Insert the following into AB 635:

1        **Section X** 126.56(4)(b) is amended to read:  
2        Except as provided in par. (f), a fee of \$25 plus 5.75 cents for each \$100 in  
3        contract obligations reported under sub. (9)(a), less any credit provided under sub.  
4        (6).

## Issue 2 -- Effective Date

### Discussion

As currently drafted, AB 635 does not specify an effective date. This bill would be much easier for DATCP to implement if it specifically stated that the bill becomes effective on the first day of the new license year. For administrative tasks such as calculating license fee credits, etc., it is imperative to have a specific, common date on which all the eligible potato buyers either were or were not participating. It makes the most sense to have this common date be the first day of each new license year. For vegetable contractors, this date is February 1.

### Recommended Amendment

Insert a non-statutory provision specifying either that the Act first takes effect on Feb. 1, 2007 or is retroactive (if necessary) to Feb. 1, 2006.

## Issue 3 -- Requirements for resuming participation.

### Discussion

126.595(2), as created in AB 635, spells out steps that a potato buyer who had previously elected not to participate in the fund must take before it can become a contributing contractor. By design, it is somewhat difficult for these potato buyers to resume participation. DATCP agrees that it would be detrimental to the fund and unfair to other contractors to allow potato buyers in this position easy access back into the fund. However, the bill, as drafted is rather vague on specifics such as filing deadlines and security amounts. Because situations where this provision would be used are likely to be very contentious, DATCP would prefer more specific treatment of this topic.

### Recommended Amendment:

Replace 126.595(2) and (3), as created in AB 635, with the following:

1 **(2) RESUMING PARTICIPATION. (a)** A vegetable contractor who is a

2 nonparticipating processing potato buyer under sub. (1) shall become a participating

3 contractor if either of the following are true.

4 1. The processing potato buyer notifies the department of its intention to become  
5 a participating contractor. Participation is effective 30 days after the processing potato  
6 buyer provides notice to the department or the effective date of the security described  
7 under par. (b), whichever is later.

8 2. The processing potato buyer fails to meet eligibility requirements for optional  
9 nonparticipation as stated in sub. (1). Participation is immediate upon the department  
10 providing notice to the processing potato buyer that they are no longer eligible for  
11 optional nonparticipation, or the effective date of the security described under par. (b),  
12 whichever is later.

13 (b) A nonparticipating processing potato buyer who is becoming a participating  
14 vegetable contractor must meet the following conditions:

1 I. The vegetable contractor must post security.

2 i. The security must be in a form that meets the requirements described in

3 126.61(4)

4 ii. The amount of the security must be at least equal to 75% of the amount  
5 reported in 126.56(9)(a).

6 iii. The vegetable contractor shall maintain the security until the department  
7 releases it. The department may not release the security until the vegetable contractor has  
8 been a participating vegetable contractor for two continuous complete license years.

9 2. The vegetable contractor must begin contributing to the fund at the beginning  
10 of its second complete license year as a participating contractor. This subpar. does not  
11 apply to disqualified vegetable contractors under s. 126.59(2).

*(Note: There seems to be some inconsistency regarding the terms "contributing" vs. "participating" and "noncontributing" vs. "nonparticipating". Generally, existing law uses "contributing" and "noncontributing" and AB 635 uses "participating" and "nonparticipating". We believe the terms are synonymous.)*

## **Issue 4 -- Cash Payment within 10 Days Instead of 20.**

### **Discussion**

As created by AB 635, 126.595(1)(a) through (f) lists certain items that processing potato buyers who wish to opt out of participating in the fund must certify or maintain evidence of before they are eligible to opt out. One of these items, [126.595(1)(b)1 and (c)1.], requires the potato buyer to certify in a statement to the department that it does not have any unpaid obligations to vegetable producers in unwritten contracts under which the potato buyer takes custody or control of the potatoes more than 20 days before paying for the potatoes in full. This provision (like all the provisions in this list) is designed to mimic requirements for coverage under the Federal PACA trust. However, PACA trust coverage (in many circumstances) actually hinges on payment within 10 days – not 20.

### **Recommended Amendment:**

In AB 635 Section 8; replace “20 days” on page 4 – lines 14 and 23 with “10 days”.

# History of Assembly Bill 635

ASSEMBLY BILL 635

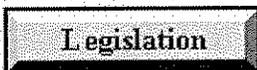
LC Amendment Memo

An Act to amend 126.55 (4) and 126.56 (6) (a); and to create 126.55 (10r) and (10t), 126.56 (4) (f), 126.57 (1) (b) 3., 126.58 (1) (c) 3., 126.59 (1) (d), 126.595, 126.61 (1) (c) 3. and 126.71 (3) (a) 5. of the statutes; relating to: participation by certain persons who buy potatoes in the Agriculture Producer Security Program and granting rule-making authority. (FE)

2005

08-30.	A.	Introduced by Representatives Ballweg, Molepske, Ott, Gronemus, Albers, Friske, Hines, Hundertmark, McCormick, Musser, Petrowski, Owens, Strachota and Vos; cosponsored by Senators Brown, Lassa, Breske and Hansen.	
08-30.	A.	Read first time and referred to committee on Agriculture	443
09-12.	A.	Fiscal estimate received.	
10-13.	A.	Public hearing held.	
10-25.	A.	Assembly substitute amendment 1 offered by Representative Ballweg	533
10-27.	A.	Executive action taken.	
10-27.	A.	Assembly amendment 1 to Assembly substitute amendment 1 offered by committee on Agriculture	555
10-31.	A.	Report Assembly Amendment 1 to Assembly Substitute Amendment 1 adoption recommended by committee on Agriculture, Ayes 14, Noes 0	557
10-31.	A.	Report Assembly Substitute Amendment 1 adoption recommended by committee on Agriculture, Ayes 14, Noes 0	557
10-31.	A.	Report passage as amended recommended by committee on Agriculture, Ayes 13, Noes 1	557
10-31.	A.	Referred to committee on Rules	557
11-01.	A.	Placed on calendar 11-8-2005 by committee on Rules.	
11-08.	A.	Read a second time	591
11-08.	A.	Referred to joint committee on Finance	591
11-08.	A.	Withdrawn from joint committee on Finance and taken up	591
11-08.	A.	Assembly amendment 1 to Assembly substitute amendment 1 adopted	591
11-08.	A.	Assembly substitute amendment 1 adopted	591
11-08.	A.	Ordered to a third reading	591
11-08.	A.	Rules suspended	592
11-08.	A.	Read a third time and passed	592
11-08.	A.	Ordered immediately messaged	592
11-09.	S.	Received from Assembly	446
11-09.	S.	Read first time and referred to committee on Agriculture and Insurance	447

Search for another history



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ASSEMBLY AMENDMENT LRBA1267 TO ASSEMBLY  
SUBSTITUTE AMENDMENT 1 ADOPTION  
RECOMMENDED, Ayes 14, Noes 0

Moved by Representative Petrowski, seconded by Representative  
Towns that **Assembly Substitute Amendment 1** be recommended  
for adoption.

Ayes: (14) Representatives Ott, Nerison, Ainsworth,  
Petrowski, Hines, Suder, M. Williams,  
Loeffelholz, Towns, Gronemus, Vruwink,  
Ziegelbauer, Molepske and Parisi.

Noes: (0) None.

Absent: (1) Representative Sinicki.

ASSEMBLY SUBSTITUTE AMENDMENT 1 ADOPTION  
RECOMMENDED, Ayes 14, Noes 0

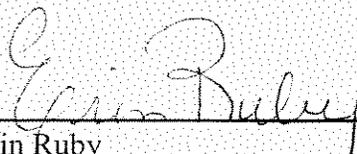
Moved by Representative Petrowski, seconded by Representative  
Loeffelholz that **Assembly Bill 635** be recommended for passage.

Ayes: (13) Representatives Ott, Nerison, Ainsworth,  
Petrowski, Hines, Suder, M. Williams,  
Loeffelholz, Towns, Gronemus, Vruwink,  
Ziegelbauer and Molepske.

Noes: (1) Representative Parisi.

Absent: (1) Representative Sinicki.

PASSAGE RECOMMENDED, Ayes 13, Noes 1

  
Erin Ruby  
Committee Clerk

**ASSEMBLY AMENDMENT 1,  
TO ASSEMBLY SUBSTITUTE AMENDMENT 1,  
TO 2005 ASSEMBLY BILL 635**

October 27, 2005 – Offered by COMMITTEE ON AGRICULTURE.

1 At the locations indicated, amend the substitute amendment as follows:

2 **1.** Page 6, line 17: substitute “(b)” for “(a)”.

3 (END)

**ASSEMBLY SUBSTITUTE AMENDMENT 1,  
TO 2005 ASSEMBLY BILL 635**

October 25, 2005 – Offered by Representative BALLWEG.

1     **AN ACT to amend** 126.55 (4), 126.56 (4) (b) and 126.56 (6) (a); and **to create**  
2           126.55 (10r) and (10t), 126.56 (4) (f), 126.57 (1) (b) 3., 126.58 (1) (c) 3., 126.59  
3           (1) (d), 126.595, 126.61 (1) (c) 3. and 126.71 (3) (a) 5. of the statutes; **relating**  
4           **to:** participation by certain persons who buy potatoes in the Agriculture  
5           Producer Security Program and granting rule-making authority.

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***Analysis by the Legislative Reference Bureau***

***Participation of certain vegetable contractors in the Agricultural Producer Security Program***

Current law generally requires vegetable contractors to be licensed by the Department of Agriculture, Trade and Consumer Protection (DATCP). A vegetable contractor is a person who buys vegetables from vegetable farmers for use in food processing or who markets vegetables for use in food processing on behalf of farmers. Licensed vegetable contractors are, with some exceptions, required to make contributions under the Agricultural Producer Security Program (the program). The program is designed to reimburse farmers for a portion of the losses they incur when contractors, including vegetable contractors, default on their financial obligations.

This substitute amendment authorizes certain licensed vegetable contractors who purchase only potatoes to choose not to make contributions under the program.

If a potato buyer who opts out of the program defaults on a contract with a farmer, the farmer is not eligible for reimbursement under the program.

To be eligible to opt out of the program, a potato buyer must be licensed by the federal government under the Perishable Agricultural Commodities Act (PACA) and must maintain documentation that farmers from whom the potato farmer purchases potatoes qualify for protection under PACA. PACA provides means of enforcing contracts, but it does not directly provide payment for any of a farmer's losses. To be eligible to opt out of the program, a potato buyer must also agree not to enter into contracts under which payment is due more than 30 days after it receives potatoes and must notify farmers that the potato buyer does not participate in the program. A potato buyer who opts out of the program is exempt from requirements to maintain fire and extended coverage insurance and from filing annual financial statements with DATCP. The substitute amendment provides a procedure by which a potato buyer who has opted out of the program may resume participation in the program and requires a potato buyer to resume participation if it ceases to be eligible to opt out of the program.

The substitute amendment requires a potato buyer who has opted out of the program to pay an annual fee of \$500, or another amount established by DATCP, instead of the annual license fee, which is based on the value of the potatoes purchased by a buyer.

***Credit against fees charged to vegetable contractors***

Under current law, if the balance in the agricultural producer security fund contributed by vegetable contractors exceeds \$1,000,000 on any November 30, DATCP credits 50 percent of the excess amount against license fees charged to vegetable contractors for the next license year. This substitute amendment reduces the amount of the balance after which the credit against license fees applies from \$1,000,000 to \$825,000.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1           SECTION 1. 126.55 (4) of the statutes is amended to read:

2           126.55 (4) "Contributing vegetable contractor" means a vegetable contractor  
3 who is licensed under s. 126.56 (1), who either has paid one or more quarterly  
4 installments under s. 126.60 (6) or is required to contribute to the fund, but the first  
5 quarterly installment under s. 126.60 (6) is not yet due, who has not elected not to  
6 participate in the fund under s. 126.595 (1), and who is not disqualified under s.  
7 126.59 (2).

1           **SECTION 2.** 126.55 (10r) and (10t) of the statutes are created to read:

2           126.55 **(10r)** “Processing potato buyer” means a vegetable contractor who  
3 purchases processing potatoes and no other processing vegetables.

4           **(10t)** “Processing potatoes” means potatoes grown or sold for use in food  
5 processing, regardless of whether those potatoes are actually harvested or processed  
6 as food.

7           **SECTION 3.** 126.56 (4) (b) of the statutes is amended to read:

8           126.56 **(4)** (b) A fee of \$25 plus 5.75 cents for each \$100 in contract obligations  
9 reported under sub. (9) (a), less any credit provided under sub. (6), except that this  
10 paragraph does not apply to a vegetable contractor to whom par. (f) applies.

11           **SECTION 4.** 126.56 (4) (f) of the statutes is created to read:

12           126.56 **(4)** (f) If the vegetable contractor is a processing potato buyer who has  
13 elected not to participate in the fund in accordance with s. 126.595 (1), a fee of \$500  
14 or another amount established by the department by rule.

15           **SECTION 5.** 126.56 (6) (a) of the statutes is amended to read:

16           126.56 **(6)** (a) If the balance in the fund contributed by vegetable contractors  
17 exceeds \$1,000,000 \$825,000 on November 30 of any license year, the department  
18 shall credit 50% of the excess amount against fees charged under sub. (4) (b) to  
19 contributing vegetable contractors who file timely license renewal applications for  
20 the next license year. The department shall credit each contributing vegetable  
21 contractor on a prorated basis, in proportion to the total fees that the vegetable  
22 contractor has paid under sub. (4) (b) for the 4 preceding license years.

23           **SECTION 6.** 126.57 (1) (b) 3. of the statutes is created to read:

24           126.57 **(1)** (b) 3. The vegetable contractor is a processing potato buyer who has  
25 elected not to participate in the fund in accordance with s. 126.595 (1).

1           **SECTION 7.** 126.58 (1) (c) 3. of the statutes is created to read:

2           126.58 **(1)** (c) 3. The vegetable contractor is a processing potato buyer who has  
3           elected not to participate in the fund in accordance with s. 126.595 (1).

4           **SECTION 8.** 126.59 (1) (d) of the statutes is created to read:

5           126.59 **(1)** (d) The vegetable contractor is a processing potato buyer who has  
6           elected not to participate in the fund in accordance with s. 126.595 (1).

7           **SECTION 9.** 126.595 of the statutes is created to read:

8           **126.595 Processing potato buyer optional nonparticipation. (1)**

9           **ELIGIBILITY.** A processing potato buyer may elect not to participate in the fund by  
10          doing all of the following:

11          (a) Submitting a notification of nonparticipation to the department by January  
12          31 of each year or, for a new processing potato buyer, at the time of application for  
13          its first license.

14          (b) Certifying in a statement to the department that the processing potato  
15          buyer will not, in the next licensing year, enter into any of the following:

16                1. An unwritten contract with a vegetable producer in this state under which  
17                the processing potato buyer takes custody or control of processing potatoes more than  
18                10 days before paying for the processing potatoes in full.

19                2. A written contract with a vegetable producer in this state under which the  
20                processing potato buyer takes custody or control of processing potatoes more than 30  
21                days before paying for the processing potatoes in full.

22          (c) Certifying in a statement to the department that the processing potato  
23          buyer does not at the time of certification have any unpaid obligations to vegetable  
24          producers under any of the following:

1           1. An unwritten contract with a vegetable producer in this state under which  
2 the processing potato buyer takes custody or control of processing potatoes more than  
3 10 days before paying for the processing potatoes in full.

4           2. A written contract with a vegetable producer in this state under which the  
5 processing potato buyer takes custody or control of processing potatoes more than 30  
6 days before paying for the processing potatoes in full.

7           (d) Providing evidence to the department that the processing potato buyer has  
8 a license under the federal Perishable Agricultural Commodities Act, 7 USC 499a to  
9 499t, that is in good standing.

10           (e) Certifying that it will disclose to all vegetable producers with whom the  
11 processing potato buyer contracts that the processing potato buyer does not  
12 participate in the fund by providing the following statement, in at least 10-point bold  
13 type, in each written contract for processed potatoes or, for unwritten contracts, in  
14 a written statement signed by the vegetable processor and the vegetable producer:  
15 “The undersigned processing potato buyer, as defined in s. 126.55 (10r), Wisconsin  
16 Statutes, does not participate in the Wisconsin agricultural producer security fund,  
17 established under s. 25.463, Wisconsin Statutes. As a result the producer does not  
18 have the security or other protections against nonpayment provided by that fund.  
19 The parties to this contract acknowledge that the Wisconsin Department of  
20 Agriculture, Trade and Consumer Protection and the State of Wisconsin cannot be  
21 held liable for any default under the contract between the parties.”

22           (f) Maintaining documentation that every purchase of potatoes grown in this  
23 state for processing under contract with the processing potato buyer qualifies for  
24 trust protection under the federal Perishable Agricultural Commodities Act, 7 USC

1 499a to 499t, and that the vegetable producers' trust rights have been validly  
2 preserved.

3 (2) RESUMING PARTICIPATION. (a) 1. A processing potato buyer that has elected  
4 not to participate in the fund may rescind its election and participate in the fund by  
5 notifying the department of its intention to participate and complying with par. (b).  
6 Participation is effective the 30th day after the day on which the department receives  
7 the notice or on the effective date of the security described in par. (b) 1., whichever  
8 is later.

9 2. A processing potato buyer that has elected not to participate in the fund shall  
10 participate in the fund if the processing potato buyer ceases to meet the requirements  
11 in sub. (1). Participation is effective on the day on which the department notifies the  
12 processing potato buyer that the potato buyer is no longer eligible under sub. (1) or  
13 on the effective date of the security described in par. (b) 1., whichever is later.

14 (b) 1. A processing potato buyer that decides or is required to participate in the  
15 fund under par. (a) shall file security with the department in a form that satisfies the  
16 requirements in s. 126.61 (4) and that is in an amount equal to at least 75 percent  
17 of the amount last reported under s. 126.56 (9) (a). The processing potato buyer shall  
18 maintain the security until the department releases it. The department may not  
19 release the security until the processing potato buyer has participated in the fund  
20 for 2 continuous complete license years.

21 2. A processing potato buyer that decides or is required to participate in the  
22 fund under par. (a) shall begin contributing to the fund at the beginning of its 2nd  
23 complete license year of participation, except that this requirement does not apply  
24 to a processing potato buyer that is disqualified under s. 126.59 (2).

25 **SECTION 10.** 126.61 (1) (c) 3. of the statutes is created to read:





## 2005 ASSEMBLY BILL

635

1     **AN ACT** *to amend* 126.55 (4) and 126.56 (6) (a); and *to create* 126.55 (10r) and  
2           (10t), 126.56 (4) (f), 126.57 (1) (b) 3., 126.58 (1) (c) 3., 126.59 (1) (d), 126.595,  
3           126.61 (1) (c) 3. and 126.71 (3) (a) 5. of the statutes; **relating to:** participation  
4           by certain persons who buy potatoes in the Agriculture Producer Security  
5           Program and granting rule-making authority.

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### *Analysis by the Legislative Reference Bureau*

#### ***Participation of certain vegetable contractors in the Agricultural Producer Security Program***

Current law generally requires vegetable contractors to be licensed by the Department of Agriculture, Trade and Consumer Protection (DATCP). A vegetable contractor is a person who buys vegetables from vegetable farmers for use in food processing or who markets vegetables for use in food processing on behalf of farmers. Licensed vegetable contractors are, with some exceptions, required to make contributions under the Agricultural Producer Security Program (the program). The program is designed to reimburse farmers for a portion of the losses they incur when contractors, including vegetable contractors, default on their financial obligations.

This bill authorizes certain licensed vegetable contractors who purchase only potatoes to choose not to make contributions under the program. If a potato buyer who opts out of the program defaults on a contract with a farmer, the farmer is not eligible for reimbursement under the program.

**ASSEMBLY BILL**

1           126.55 (10r) “Processing potato buyer” means a vegetable contractor who  
2 purchases processing potatoes and no other processing vegetables.

3           (10t) “Processing potatoes” means potatoes grown or sold for use in food  
4 processing, regardless of whether those potatoes are actually harvested or processed  
5 as food.

6           **SECTION 3.** 126.56 (4) (f) of the statutes is created to read:

7           126.56 (4) (f) If the vegetable contractor is a processing potato buyer who has  
8 elected not to participate in the fund in accordance with s. 126.595 (1), a fee of \$500  
9 or another amount established by the department by rule.

10          **SECTION 4.** 126.56 (6) (a) of the statutes is amended to read:

11          126.56 (6) (a) If the balance in the fund contributed by vegetable contractors  
12 exceeds \$1,000,000 \$825,000 on November 30 of any license year, the department  
13 shall credit 50% of the excess amount against fees charged under sub. (4) (b) to  
14 contributing vegetable contractors who file timely license renewal applications for  
15 the next license year. The department shall credit each contributing vegetable  
16 contractor on a prorated basis, in proportion to the total fees that the vegetable  
17 contractor has paid under sub. (4) (b) for the 4 preceding license years.

18          **SECTION 5.** 126.57 (1) (b) 3. of the statutes is created to read:

19          126.57 (1) (b) 3. The vegetable contractor is a processing potato buyer who has  
20 elected not to participate in the fund in accordance with s. 126.595 (1).

21          **SECTION 6.** 126.58 (1) (c) 3. of the statutes is created to read:

22          126.58 (1) (c) 3. The vegetable contractor is a processing potato buyer who has  
23 elected not to participate in the fund in accordance with s. 126.595 (1).

24          **SECTION 7.** 126.59 (1) (d) of the statutes is created to read:

**ASSEMBLY BILL**

1           2. A written contract with a vegetable producer in this state under which the  
2 processing potato buyer takes custody or control of processing potatoes more than 30  
3 days before paying for the processing potatoes in full.

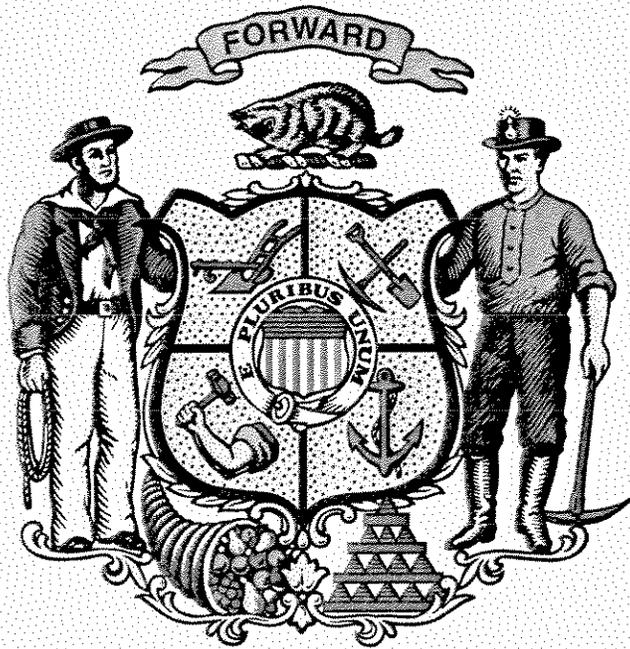
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5 a license under the federal Perishable Agricultural Commodities Act, 7 USC 499a to  
6 499t, that is in good standing.

7           (e) Certifying that it will disclose to all vegetable producers with whom the  
8 processing potato buyer contracts that the processing potato buyer does not  
9 participate in the fund by providing the following statement, in at least 10-point bold  
10 type, in each written contract for processed potatoes or, for unwritten contracts, in  
11 a written statement signed by the vegetable processor and the vegetable producer:  
12 "The undersigned processing potato buyer, as defined in s. 126.55 (10r), Wisconsin  
13 Statutes, does not participate in the Wisconsin agricultural producer security fund,  
14 established under s. 25.463, Wisconsin Statutes. As a result the producer does not  
15 have the security or other protections against nonpayment provided by that fund.  
16 The parties to this contract acknowledge that the Wisconsin Department of  
17 Agriculture, Trade and Consumer Protection and the State of Wisconsin cannot be  
18 held liable for any default under the contract between the parties."

19           (f) Maintaining documentation that every purchase of potatoes grown in this  
20 state for processing under contract with the processing potato buyer qualifies for  
21 trust protection under the federal Perishable Agricultural Commodities Act, 7 USC  
22 499a to 499t, and that the vegetable producers' trust rights have been validly  
23 preserved.

24           **(2) RESUMING PARTICIPATION.** (a) A processing potato buyer that has elected not  
25 to participate in the fund may rescind its election and may participate in the fund







November 15, 2005

Wisconsin Senate Agriculture and Insurance Committee  
Room 411 South  
State Capitol  
Madison, WI

RE: **Opposition to A.B. 635**, relating to exempting certain potato buyers from the Agricultural Producer Security Program

Dear Senate Agriculture and Insurance Committee Members:

The Midwest Food Processors Association, Inc. (MWFPA), consists of many of the larger contributors to the vegetable portion of the Agricultural Producer Security Program (APSP) and we are opposed to the exemption of some potato buyers from the program for the following reasons:

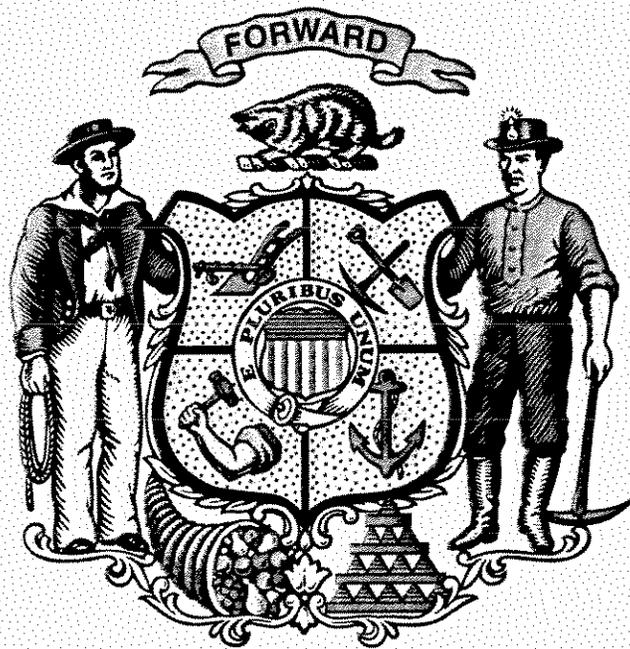
- 1) It will impose additional costs on those vegetable processors remaining in the program because lost administrative revenue to DATCP will have to be absorbed by those remaining;
- 2) Reliance on the very complex provisions (and loopholes) of the Perishable Agricultural Commodity Act will not provide for the same type of coverage under the APSP and may expose growers to significant losses in the event of a default by an exempt potato processor;
- 3) The legislation undermines the very premise of why the APSP was created with grower and processor input, to provide predictability and security in relations for procuring farm products;
- 4) Growers and processors knew the program would put Wisconsin production at a competitive disadvantage with other states when agreeing to the concept less than five years ago and now the exemption of a portion of the program is imposing additional costs on only a portion of the industry;
- 5) The exempt potato purchasers may acquire an advantage in being able to attract growers with higher pricing than those vegetable processors that are left to face higher administrative costs from DATCP. The federal prohibition on growing fruits and vegetables on program acres, the influx of foreign competition, and the exempting of some potato buyers will further erode the vegetable processing capabilities in the State of Wisconsin.

The members of the MWFPA respectfully urge you to vote against AB 635. We also urge you to consider the comments of DATCP and the impact this bill will have on those remaining in the security program. It would be far better to treat certain potato buyers in the bill like fresh market potatoes and eliminate the administrative burden on DATCP.

Thank you for the opportunity to speak before you today and I would be happy to address any of your concerns and questions.

Sincerely,  
  
John D. Exner, CAE  
MWFPA President/Legal Counsel

**EXPERTISE AND INFLUENCE TO POWER YOUR FOOD BUSINESS**





# JOAN BALLWEG

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Madison, Wisconsin 53708-8952  
(608) 266-8077  
Toll-free: (888) 534-0041  
Rep.Ballweg@legis.state.wi.us

WISCONSIN STATE REPRESENTATIVE

41<sup>ST</sup> ASSEMBLY DISTRICT

November 17, 2005

Senator Dan Kapanke, Chair  
Senate Committee on Agriculture and Insurance  
Room 104 South  
State Capitol  
Madison, WI 53707-7882

Dear Senator Kapanke:

Thank you for scheduling Assembly Bill 635, changes to Wisconsin's Producer Security Act, for a hearing in the Senate Committee on Agriculture and Insurance on Tuesday, November 15, 2005.

The hearing was very timely, and I appreciate your efforts to advance the bill.

Potato contracts for the 2006 growing season will be negotiated over the next couple of months, and should be finalized by February 2006. Passage of this bill before the end of the year would be very beneficial to Wisconsin's growers that grow potatoes for chips.

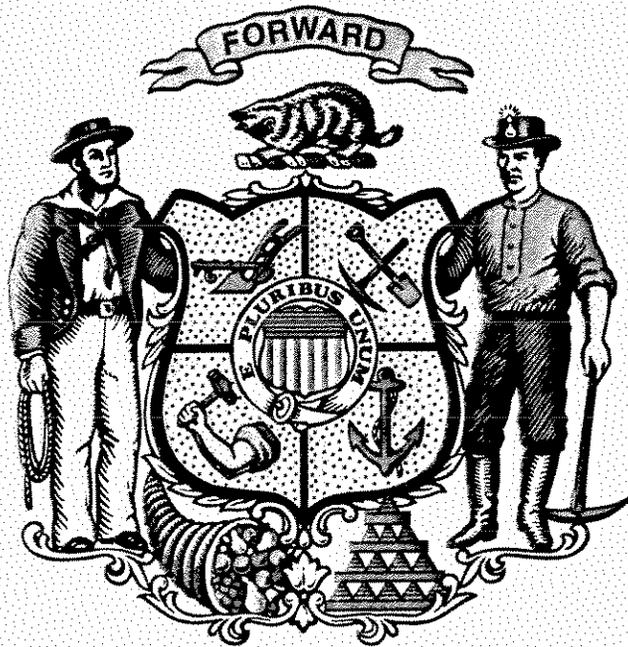
At the hearing on Tuesday, it was discussed that Assembly Bill 635 could be scheduled for an executive session as early as Monday, November 28, 2005.

It is my hope that the bill can be scheduled for the executive session on that date.

If you have any questions, please contact my office as soon as possible, so we can discuss your concerns.

Regards,

Joan Ballweg  
State Representative  
41<sup>ST</sup> Assembly District



**Perlich, John H.**

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**From:** Richard Pavelski [richard.pavelski@heartland-farms-wis.com]  
**Sent:** Thursday, November 24, 2005 8:07 AM  
**To:** Sen.Kapanke  
**Cc:** Sen.Hansen; Sen.Erpenbach; Sen.Olsen; Sen.Miller; Sen.Kedzie; Sen.Brown; Sen.Lassa

**Attachments:** AB 635 letter - 11-23-05.doc



AB 635 letter -  
11-23-05.doc (...)

Dear Senator Kapanke:

Thank you for your allowing me to testify at your recent committee hearing.

Attached please find a letter with additional comments.

Thank you for your support in this matter.

Best Regards;  
Richard Pavelski  
Pres. Heartland Farms Inc.  
Office 715-249-5555 Ext. 102  
Mobile 239-272-5014  
E-mail richard.pavelski@heartland-farms-wis.com



November 23, 2005

VIA E-MAIL [sen.kapanke@legis.state.wi.us](mailto:sen.kapanke@legis.state.wi.us)

Senator Dan Kapanke  
Chair-Senate Committee on Agriculture  
104 S. State Capitol  
Madison, WI 53702

Re: AB 635—Ag Security Relief for Processed Potatoes

Dear Senator Kapanke:

Thank you for scheduling a Senate Agriculture Committee vote on AB 635 for Monday, November 28, 2005. I urge you and the members of the Committee (who have received copies of this letter) to vote in favor of passage of this legislation.

This bill is very important to me and the rest of the Wisconsin potato industry (each and every member of which has signed a petition urging passage of this bill). It is critical that this bill be approved, as soon as possible, by the Senate Agriculture Committee and the Wisconsin State Senate.

Beginning about January 1, 2006, we Wisconsin growers will begin to negotiate potato contracts with processors. If this bill is not law by that date, then we are exposed to a very serious risk of having some of these processors cease to do business in Wisconsin.

This would result in a severe financial hardship for our potato industry in Wisconsin. It is in the hands of the Wisconsin State Senate and the Senate Agriculture Committee to avert this potentially catastrophic economic hardship by adopting AB 635 as soon as possible.

The Assembly Agriculture Committee voted unanimously (14-0) in favor of adoption of the Substitute Amendment before you and overwhelmingly (13-1) in favor of passage. The bill passed the State Assembly on a voice vote on November 8. We hope the Senate will support the legislation with the same near-unanimous approval already given by the State Assembly and put this bill on the Governor's desk for signature by mid-December.

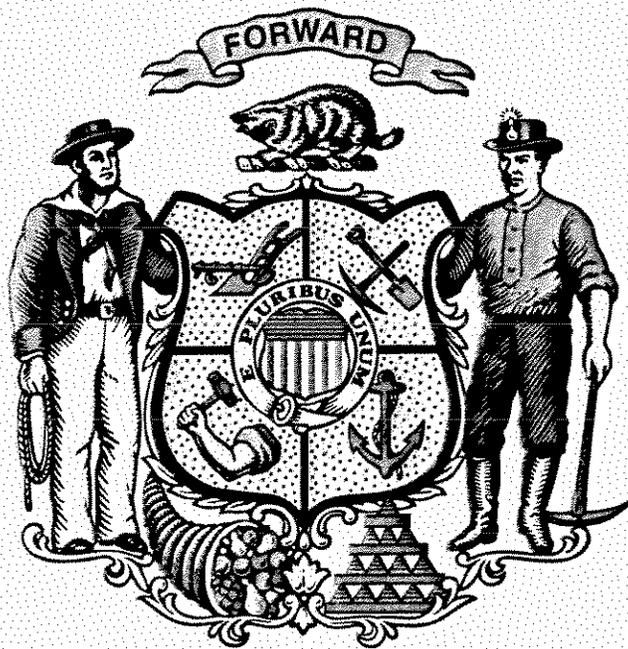


Thank you.

Sincerely,

Richard Pavelski

cc: Senator Neal Kedzie ([sen.kedzie@legis.state.wi.us](mailto:sen.kedzie@legis.state.wi.us))  
Senator Ron Brown ([sen.brown@legis.state.wi.us](mailto:sen.brown@legis.state.wi.us))  
Senator Luther Olsen ([sen.olsen@legis.state.wi.us](mailto:sen.olsen@legis.state.wi.us))  
Senator Jon Erpenbach ([sen.erpenbach@legis.state.wi.us](mailto:sen.erpenbach@legis.state.wi.us))  
Senator Dave Hansen ([sen.hansen@legis.state.wi.us](mailto:sen.hansen@legis.state.wi.us))  
Senator Mark Miller ([sen.miller@legis.state.wi.us](mailto:sen.miller@legis.state.wi.us))





State of Wisconsin  
Jim Doyle, Governor

**Department of Agriculture, Trade and Consumer Protection**  
Rod Nilsestuen, Secretary

November 28, 2005

The Honorable Dan Kapanke, Chair  
Senate Committee on Agriculture and Insurance

**RE: Follow-up to public hearing on AB 635, relating to participation by certain persons who buy potatoes in the Agricultural Producer Security Program.**

Dear Senator Kapanke:

Thank you for permitting the Department of Agriculture, Trade and Consumer Protection the opportunity to testify regarding AB 635. As we stated at the hearing, the department is opposed to this bill for two primary reasons. First, we are generally uncomfortable with the concept of allowing certain contractors to opt-out of the program if they meet a list of specified conditions because we believe this approach creates serious administrative and enforcement issues. Second, we do not believe it is equitable to other contractors to reduce their license fees while continuing to require the department to provide oversight that is virtually as extensive as that currently required. The cost of this continued oversight will come at the expense of others in the program. Despite our reservations, we could live with this bill if (1) potato "chippers" were removed from the program altogether, like fresh potatoes, or (2) potato "chippers", while being relieved of paying assessments, continued to pay license fees pursuant to the same formula that determines the license fees of all other contractors.

During the hearing, several members of the committee asked questions relating to simply exempting potatoes grown and sold for potato chips from the Wisconsin Producer Security Program. While this is quite different than AB 635, we think it is a more direct and effective way to solve the underlying problems raised by the potato growers while maintaining parity among other participants in the program. And, as at least one grower testified, exemption of "chippers" from the program is acceptable to the majority of growers.

If the committee concurs, this change could be done fairly simply. It would require a substitute amendment that replaces Assembly Substitute Amendment 1, AB 635 with the following text:

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3  
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**SECTION 1.** 126.55(10s) is created to read:

126.55(10s) "Potato chip" means a food product made from fresh or dried potatoes cut or formulated into thin slices and then fried or baked until crisp. Potato chip does not include food products that have a cross-section of more than 0.25 inches.

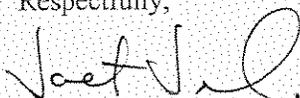
**SECTION 2.** 126.55(11) is amended to read:

*Agriculture generates \$51.5 billion for Wisconsin*

1                   126.55(11) "Processing vegetables" means vegetables grown or sold for use in  
2                   food processing, regardless of whether those vegetables are actually harvested or  
3                   processed as food. "Processing vegetables" includes sweet corn grown or sold for use in  
4                   food processing, but does not include grain. "Processing vegetables" does not include  
5                   potatoes grown or sold for use in the manufacture of potato chips.

We are more than happy to further discuss the amendment discussed above, and, believe that amendment to be a far more realistic, workable, and equitable solution for all concerned.

Respectfully,



Janet Jenkins  
Administrator  
Division of Trade and Consumer Protection

CC:   Members of the Senate Committee on Agriculture and Insurance  
      Joan Ballweg, State Representative  
      Mike Carter, Wisconsin Potato and Vegetable Growers Association